

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1562

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA

Appellee

-against-

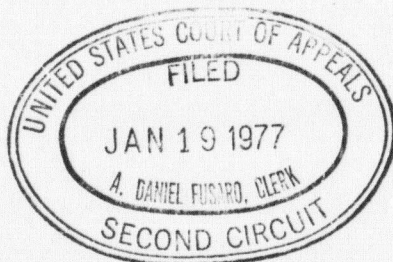
PRASARN BHONGSUPATANA

Appellant
-----X

B P/s
Docket No. 76-1562

APPENDIX

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Attorney for Appellant
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Tel. 875-1975



PAGINATION AS IN ORIGINAL COPY

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U.S. TITLE/SECTION
 21:952(a)960(a)(1);
 841(a)(1) &
 18:2
 OFFENSES CHARGED
 Did import and possess with
 intent to distribute heroin, etc.

U.S. MAG. CASE NO. 76 M 2062
 Denial AMT. ☐ Fugitive
 Set ☐ Pers. Recog.
 200,000 ☐ Conditions
 10/2/76 ☐ 10% Deposit
 X ☒ Surety Bond
 X ☒ Not Made ☐ Collateral
 Status Changed ☐ 3rd ☐ Other
 (See Docket) Priv. Cust.

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody/Ingen	High Risk Date 10-7-76	10/14/76	10/26/76	11/2/76
Summons Served	INDICT. Waived	10/26/76	10/28/76	
First Appearance 10-2-76	In Charging District			

MAGISTRATE		OUTCOME
Search Warrant	Issued	<input type="checkbox"/> DISMISSED <input checked="" type="checkbox"/> HELD FOR OR OTHER PROCEEDING IN THIS DISTRICT <input type="checkbox"/> HELD FOR OR OTHER PROCEEDING IN DISTRICT BELOW
Summons	Issued	
Arrest Warrant Issued	Served	
COMPLAINT	10-2-76 ASC/07E	
OFFENSE (In Complaint)	Importation of large quantities of heroin. T-21 USC Section 952(a) 963.	

U.S. Attorney or Asst.

Clayman...
 Carol Amon

ATTORNEYS

John Corbett, Esq.
 66 Court Street
 Brooklyn, New York

Show last names and suffix numbers of other defendants on same indictment information

DATE	DOCUMENT NO.	PROCEEDINGS	EXEMPTIBLE DELAY
10/12/76		Deft. indicted on 10/7/76 - See 76 CR 640.	
10-7-76		Before CATOGGIO, J - Indictment filed	
10/14/76		Before WEINSTEIN, J. - Case called. Deft & Counsel present. Deft arraigned and enters a plea of not guilty. Pre-Trial conference held and concluded. Bail of 200,000.00 continued. Interpreter sworn. Defts motion for reduction of trial set for 10/26/76 at 9:30 a.m.	
10-26-76		Voucher of Compensation for Expert Services - Filed.	
10-26-76		Before Weinstein, J.- Case Called. Deft & Counsel Present. Trial ordered & Begun. Jurors were selected and sworn. Vinita Bulvan sworn as interpreter. Trial continued to 10-27-76.	
10-27-76		Copy of Letter dated 10-21-76 received from Chambers to Mr. Corbett from Mr. Carol Amon - Filed. And Report of Investigation - Filed.	
10-27-76		Before Weinstein, J.- Case Called. Deft. & Counsel Present. Trial resumed. Deft's motion to dismiss the indictment is denied. Trial continued to 10-28-76 at 10:00 A.M.	

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW, IN SECTION V, A.

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
	(DOCUMENT NO.)		Investigative Delay (a)	Waiting for Trial (b)	Total Delay (c)	
10/28/76	Before WEINSTEIN, J.- Case called. Deft & Counsel present. Trial resumed. Both sides rest. Defts motion for a judgment of acquittal is denied. Court charges jury. Alternate jurors discharged. Jury returns and enters a verdict of guilty on counts 1 and 2. Jury discharged. Trial concluded. Sentence set down for 11/12/76 at 10:30 a.m.					
10/28/76	By WEINSTEIN, J. - Order of sustenance filed.					
11-11-76	By Larry F. Taylor - Letter received from M.C.C. giving a brief summary of their observation during stay. - filed.					
11-12-76	Before WEINSTEIN J - case called - deft & atty John Corbett present - Benita Buivan sworn as interpreter - deft sentenced to 10 years imprisonment on each of counts 1 and 2 plus special parole term of 5 years to run conc. and fine \$10,000.00 on each of counts 1 and 2 to run conc. for a total fine of \$10,000.					
11-12-76	Judgment & commitment filed - certified copies to Marshal					
11-16-76	Certified Copy of Judgment and Commitment returned and filed from Marshal. Deft. delivered to M.C.C. on 10-4-76.					
11-17-76	Notice of Appeal filed without fee.					
11-17-76	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals.					
11-18-76	Voucher for expert services filed					
11-22-76	Voucher for compensation of atty John Corbett filed					
DATE	FILE NUMBER	DATE	FILE NUMBER	DATE	FILE NUMBER	

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- against -

PRASARN BHOOSUPATANA,

Defendant.

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 6th day of September 1976, within the Eastern District of New York, the defendant PRASARN BHOOSUPATANA did knowingly and intentionally import into the United States from Bangkok, Thailand approximately 6.1 kilograms of heroin hydrochloride, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Sections 952(a) and 960(a)(1); Title 18, United States Code, Section 2)

COUNT TWO

On or about the 1st day of October 1976, within the Eastern District of New York, the defendant PRASARN BHOOSUPATANA did knowingly and intentionally possess with intent to distribute a quantity of heroin hydrochloride, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1)).

A TRUE BILL.

FORWARDED

DAVID G. TRAMER
United States Attorney
Eastern District of New York

Wurstin J
INDICTMENT

Cr. No. 76 cr 640
(T. 21 U.S.C., §952(a)
and §960(a)(1); T. 21,
U.S.C., §841(a)(1); T. 18,
U.S.C., §2)

10-7-76

1
2 case.

3 THE COURT: Thank you counsel. Now, this
4 defendant has pled not guilty. The Government had
5 the burden of proving his guilt beyond a reasonable
6 doubt with respect to each element of the crimes
7 he's charged with committing. This burden never
8 shifts throughout the trial. A defendant does not
9 have to prove his innocence, he may not submit any
10 evidence at all. The presumption of innocence remains
11 with the defendant throughout the trial and must be
12 considered by you in your deliberations. A reasonable
13 doubt means that doubt sufficient to cause a prudent
14 person to hesitate to act in the most important affairs
15 of his and her life. A reasonable doubt must result
16 from the evidence submitted or their failure to produce
17 evidence.

18 (Continued on next page.)
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1 Finding a defendant guilty of committing a drug
2 offense and subjecting him to the possibility of
3 penalties is a serious matter and you will consider
4 this in determining whether there is a reasonable doubt.
5 And nevertheless if you are convinced at the end of
6 your deliberation that the Government has proven this
7 defendant guilty beyond a reasonable doubt you should
8 find him guilty and not be swayed by any consideration
9 of sympathy. In this case the defendant is charged
10 with two counts or crimes. Each must be separately
11 considered by you. You may find him guilty of both
12 or not guilty of both or guilty of one and not guilty
13 of the other. Each has to be separately considered.
14 First count, the charge reads as follows: On or
15 about the sixth day of September, 1976, within the
16 Eastern District of New York the defendant did
17 knowingly and intentionally import into the United
18 States from Bangkok, Thailand, approximately 6.1
19 kilograms of heroin. The Schedule 1 narcotic drug
20 controlled substance thereby violating Section 952 of
21 Title 21 of the United States Code which reads as
22 follows: It shall be unlawful to import into the
23 United States or anyplace outside thereof any
24 controlled substance of Schedule 1 of this chapter.
25 It states that anyone knowingly or intentionally

2 1 importing or exporting -- in this case only importing --
2 such a controlled substance shall be guilty of a
3 crime. In order to find him guilty of the violation
4 as charged. You must find that he did import into
5 the United States a controlled substance. Heroin is
6 a substance listed in Schedules as a controlled drug.
7 If the defendant did import that drug then you have to
8 decide whether he did so knowingly and intentionally.
9 A person does not do an act knowingly if his behavior
10 is the result of a mistake or negligence or any other
11 innocent reason.

12 If you find that the defendant acted intention-
13 ally you must find that he acted voluntarily and with
14 the specific intent to do something the law forbids
15 that is to say that he specifically intended for that
16 purpose of importing heroin into this country.

17 The fact of his knowledge may be established
18 by directed circumstantial evidence as any other fact
19 in the case. Knowledge may be proven by the defendant's
20 conduct as well as by his testimony on the stand since
21 we have no way of looking directly into the person's
22 mind.

23 Obviously the critical facts for this case is
24 whether this defendant knew there was heroin in that
25 pedestal. The defendant has testified that he has no

3

1 such knowledge. One may not willfully and intentionally
2 remain ignorant of a fact important and material to
3 his conduct in order to escape the consequences of
4 the credible law.

5 If you find from all the evidence beyond a
6 reasonable doubt that the defendant believed that he
7 had heroin in that pedestal so that he can say, but
8 he consciously avoiding confirming that there was
9 heroin in it so if apprehended he could say he did not
10 know there was heroin in that pedestal you may treat
11 this deliberate avoidance of positive knowledge as the
12 equivalent of knowledge. In other words you may find
13 the defendant acted knowingly if you find either that
14 he actually knew that the pedestal contained heroin or
15 that he deliberately closed his eyes because he had
16 every reason to believe it was a fact.

17 What I would like to emphasize, ladies and
18 gentlemen, is the requisite knowledge cannot be
19 established by testimony demonstrating either negli-
20 gence or even foolishness on the part of the defendant.
21 The defendant if he acted knowingly and intentionally
22 is not excused from guilt because he himself did not
23 cause the heroin to be sent from Thailand into the
24 United States. That is that somebody else actually
25 shipped it or because he was acting for another

4 1 arranging to receive it in this country. Whoever
2 commits an offense against the United States or aids,
3 abides, commands, induces or cures its commission
4 punishable at the principal. This means if you find
5 the defendant was knowingly and willfully aiding and
6 abetting another person in the commission of a crime
7 in importing heroin and he did so purposely he's as
8 guilty as if he was solely responsible for planning
9 and executing the entire scheme.

10 The second charge reads as follows: On or
11 about the first day of October 1976, the exact dates
12 aren't critical, the defendant did knowingly and
13 intentionally possess with intent to distribute a
14 quantity of heroin in violation of the laws. And the
15 second provision shall be unlawful for any person
16 knowingly or intentionally of knowingly and
17 intentionally to possess with intent to distribute a
18 controlled substance.

19 Now, heroin as I said is a controlled substance.
20 There are three elements to the crime. First that
21 the defendant did in fact possess heroin. Now, the
22 word possession means not only physical possession the
23 way I possess these glasses, but also means dominion
24 and control of the drug. Such as the defendant could
25 move them himself or cause others to move them as his

5 1 agents. If, for example, he had the power to have
2 the trucker move them or an agent move it and say
3 here, you move them from here to here then he would
4 be in constructive possession of those goods. This is
5 constructive company possession of the furniture in
6 your house even though you're not here with the
7 consent of your spouse.

8 Of course to take the furniture and move it
9 to another place. It is not necessary for the
10 Government to prove that the defendant took physical
11 possession from that he actually embraced it in and
12 put it in his arms or pocket.

13 Proof of constructive possession is enough.
14 Second, you must find the defendant beyond a reasonable
15 doubt that he knowingly and intentionally possessed
16 the heroin. He possessed it not knowing it was
17 heroin and it was just by accident then it was not
18 possession.

19 Now if you find that he distributed the heroin
20 willfully the word distribute means to deliver, that
21 is to transfer to another person a gift or sale or
22 anything else. You give it to somebody else and then
23 he has the possession of distributing. It doesn't
24 make any difference if it is going to be sold or
25 given away. Transferred to somebody else as a

6 1 possession. YOU are going to have to weigh the
2 evidence you heard carefully. You are the sole judges
3 of the credibility of the witnesses. The assumption
4 that a witness will tell the truth may be dispelled
5 by the appearance and conduct of the witness on the
6 stand. The manner in which the witness testified.
7 The character of the testimony. The contrary evidence
8 if any or contradictory.

9 Consider each witness' intelligence, his motive,
10 his state of mind, his partnership in prosecution or
11 defense of the case. The demeanor and manner of
12 testifying on the witness stand. The relationship
13 each witness bears to each side in the case. The
14 manner in which the witness might be affected by the
15 verdict and also the extent to which the witness is
16 contradicted or supported by the other evidence in the
17 case.

18 Don't give any greater weight or credibility
19 to a witness merely because he happens to be an
20 employee of the Government. His testimony is to be
21 considered the same way you would consider anybody
22 else's testimony. The defendant was a competent
23 witness. He voluntarily took the witness stand,
24 although, he could not be compelled to do so. His
25 testimony should not be disbelieved solely because he

1 is a defendant. Obviously, it should not be
2 disbelieved solely because he's a foreigner. That
3 should not enter into your deliberations. He should
4 be treated exactly the way an American citizen would
5 be treated in this Court or the way you would like to
6 be treated in a foreign court. You may rely upon his
7 testimony or so much of it as you believe. You may
8 however in weighing his testimony considering the fact
9 he has a vital interest in the outcome of this trial
10 and you can consider his prior statement in assessing
11 his credibility.

12 If you believe a witness has willfully sworn
13 falsely to you you can ignore his testimony completely
14 or accept part of it or reject part of it if you
15 think he lied. Your recollection of the Government,
16 if you want any of the testimony read back we will
17 try to get it. It's still on these tapes, however,
18 it's not typed up, but we will try to get it. You
19 really don't need it so far because it is difficult
20 to get it out of that machine. You want any or all
21 of the exhibits we will send them in. I don't want
22 to send in the narcotics for obvious reasons.

23 If you want to look at the narcotics you will
24 have to come out. Each of you of course is entitled
25 to your own opinion. You should consider each other's

1 opinions carefully. Listen politely and fully to each
2 other. Don't hesitate to change your opinion if you
3 think somebody else is right and your're right, but
4 in the ultimate analysis you have to make your own
5 decision.

6 You want any further instructions on the law
7 send in a note and I will try to be of help to you.
8 The verdict has to be unanimous. You come in with
9 two verdicts, guilty or not guilty on Count 1. The
10 importation count. Guilty or not guilty on Count 2,
11 the possession with intent to distribute.

12 Your oath sums up your duty and that is not
13 fear or favor, that you will well and truly try the
14 issues between the parties according to the evidence
15 you heard and the law as I've explained it to you.

16 Does counsel want to see me at the side bar?

17 MR. CORBETT: There is no need for the defense.

18 MS. AMON: No need.

19 THE COURT: All right, swear the marshal please.

20 (The Court Clerk swears in the marshal.)

21 THE COURT: Retire in the jury room please.

22 (Whereupon the jurors leave to deliberate at

23 1:05 p.m.)

24 THE COURT CLERK: A note from the jury marked
25 as Court Exhibit 3.

RECEIVED
U. S. ATTORNEY
JAN 18 2 10 PM '77
EAST. DIST. N. Y.

Paula
Granmore